

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LESLIE J. MERRITT,

Plaintiff,

V.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. 3:14-cv-05964-KLS

**ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS**

Plaintiff has brought this matter for judicial review of defendant's denial of her applications for disability insurance and supplemental security income ("SSI") benefits. Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. After reviewing the parties' briefs and the remaining record, the Court hereby finds that for the reasons set forth below, defendant's decision to deny benefits should be reversed and this matter should be remanded for further administrative proceedings.

FACTUAL AND PROCEDURAL HISTORY

On June 28, 2010, plaintiff filed an application for disability insurance benefits, and on June 29, 2010, she filed another application for SSI benefits, alleging in both applications she became disabled beginning January 31, 2007. *See* Dkt. 13, Administrative Record (“AR”) 22. Both applications were denied upon initial administrative review on August 31, 2010, and on

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1 reconsideration on December 29, 2010. *See id.* A hearing was held before an administrative law
2 judge (“ALJ”) on March 6, 2013, at which plaintiff, represented by counsel, appeared and
3 testified, as did a vocational expert. *See AR 49-114.*

4 In a decision dated April 18, 2013, the ALJ determined plaintiff to be not disabled. *See*
5 AR 22-41. Plaintiff’s request for review of the ALJ’s decision was denied by the Appeals
6 Council on October 8, 2014, making that decision the final decision of the Commissioner of
7 Social Security (the “Commissioner”). *See AR 1; 20 C.F.R. § 404.981, § 416.1481.* On
8 December 11, 2014, plaintiff filed a complaint in this Court seeking judicial review of the
9 Commissioner’s final decision. *See Dkt. 3.* The administrative record was filed with the Court on
10 February 27, 2015. *See Dkt. 13.* The parties have completed their briefing and thus this matter is
11 now ripe for the Court’s review.

12 Plaintiff argues defendant’s decision to deny benefits should be reversed and remanded
13 for an award of benefits, or in the alternative for further administrative proceedings, because the
14 ALJ erred: (1) in failing to find her disabled pursuant to Rule 201.12 of the Medical-Vocational
15 Guideline (“Grids”) at step five of the Commissioner’s sequential disability evaluation process¹,
16 given her age and a residual functional capacity (“RFC”) assessment more properly characterized
17 as sedentary; and (2) in discounting her credibility. For the reasons set forth below, the Court
18 agrees the ALJ erred in not applying the Grids based on a sedentary RFC, and thus in
19 determining plaintiff to be not disabled. Also for the reasons set forth below, however, the Court
20 further finds that while defendant’s decision should be reversed on that basis, this matter should
21 be remanded for further administrative proceedings.

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26¹ The Commissioner employs a five-step “sequential evaluation process” to determine whether a claimant is or is not
disabled. *See 20 C.F.R. § 404.1520, § 416.920.* If at any particular step of that process, the claimant is determined to
be disabled or not disabled, the determination is made at that step and the evaluation process ends. *See id.*

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DISCUSSION

The determination of the Commissioner that a claimant is not disabled must be upheld by the Court, if the “proper legal standards” have been applied by the Commissioner, and the “substantial evidence in the record as a whole supports” that determination. *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986); see also *Batson v. Commissioner of Social Security Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991) (“A decision supported by substantial evidence will, nevertheless, be set aside if the proper legal standards were not applied in weighing the evidence and making the decision.”) (citing *Brawner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1987)).

Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted); *see also Batson*, 359 F.3d at 1193 (“[T]he Commissioner’s findings are upheld if supported by inferences reasonably drawn from the record.”). “The substantial evidence test requires that the reviewing court determine” whether the Commissioner’s decision is “supported by more than a scintilla of evidence, although less than a preponderance of the evidence is required.” *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence admits of more than one rational interpretation,” the Commissioner’s decision must be upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence sufficient to support either outcome, we must affirm the decision actually made.”) (quoting *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).²

² As the Ninth Circuit has further explained:

. . . It is immaterial that the evidence in a case would permit a different conclusion than that which the [Commissioner] reached. If the [Commissioner]'s findings are supported by substantial evidence, the courts are required to accept them. It is the function of the [Commissioner], and not the court's to resolve conflicts in the evidence. While the court may not try the case *de novo*, neither may it abdicate its traditional function of review. It must

1 In terms of plaintiff's exertional limitations,³ the ALJ found in relevant part that she had
 2 the RFC⁴:

3 **... to perform light work as defined in 20 CFR 404.1567(b) and
 4 416.967(b) except she can stand/walk for two hours and sit for six hours
 5 in an eight-hour workday. She must be allowed to alternate between
 sitting and standing at will while remaining on task. . . .**

6 AR 27 (emphasis in original). The ALJ further found plaintiff had the following non-exertional
 7 limitations⁵:

8 **... She can perform all postural activities occasionally except she can
 9 balance and stoop frequently. She can occasionally reach overhead
 10 bilaterally. She can frequently handle and finger. She can have no greater
 11 than frequent exposure to extreme cold. She can have no more than [sic]
 12 frequent exposure to vibrations and hazards such as moving machinery
 or unprotected heights. She can perform simple routine and repetitive
 tasks as defined by reasoning level 2. She can have no interaction with the
 public and no greater than occasional interaction with coworkers.**

13 *Id.* At step five in this case, the ALJ found in relevant part:

14 In determining whether a successful adjustment to other work can be made, I
 15 must consider the claimant's residual functional capacity, age, education, and
 16 work experience in conjunction with the Medical-Vocational Guidelines, 20
 17 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or
 substantially all of the exertional demands at a given level of exertion, the

18 scrutinize the record as a whole to determine whether the [Commissioner]'s conclusions are
 19 rational. If they are . . . they must be upheld.

20 *Sorenson*, 514 F.2dat 1119 n.10.

21 ³ Exertional limitations are those that only affect a claimant's "ability to meet the strength demands of jobs (sitting,
 standing, walking, lifting, carrying, pushing, and pulling)." 20 C.F.R. § 404.1569a(b), § 416.969a(b).

22 ⁴ If a disability determination "cannot be made on the basis of medical factors alone at step three of" the sequential
 23 disability evaluation process, the ALJ must identify the claimant's "functional limitations and restrictions" and
 24 assess his or her "remaining capacities for work-related activities." Social Security Ruling ("SSR") 96-8p, 1996 WL
 374184, at *2. A claimant's RFC assessment is used at step four of that process to determine whether he or she can
 25 return to his or her past relevant work, and if necessary at step five thereof to determine whether the claimant can
 perform other jobs existing in significant numbers in the national economy. *See id.* A claimant's RFC is what he or
 she "can still do despite his or her limitations." *Id.* It is the maximum amount of work the claimant is able to perform
 based on all of the relevant evidence in the record. *See id.*

26 ⁵ Non-exertional limitations are those that affect a claimant's "ability to meet the demands of jobs other than the
 strength demands." 20 C.F.R. § 404.1569a(c)(1), § 416.969a(c)(1); *see also* SSR 83-14, 1983 WL 31254 ("Any
 functional or environmental job requirement which is not exertional is 'nonexertional.'").

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medical-vocational rules direct a conclusion of either “disabled” or “not disabled” depending upon the claimant’s specific vocational profile (SSR 83-11). When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decisionmaking unless there is a rule that directs a conclusion of “disabled” without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decisionmaking (SSR 85-15).

If the claimant had the residual functional capacity to perform the full range of light work, a finding of “not disabled” would be directed by Medical-Vocational Rule 202.21 and Rule 202.14. However, the claimant’s ability to perform all or substantially all the requirements of this level of work has been impeded by additional limitations. To determine the extent to which these limitations erode the unskilled light occupational base, I asked the vocational expert whether jobs exist in the national economy for an individual with the claimant’s age, education, work experience, and residual functional capacity. The vocational expert testified that given all of these factors the individual would be able to perform the requirements of representative occupations such as an assembler of electrical accessories . . . The individual could also perform the duties of a solderer . . . Finally, the individual could perform the duties of a crabmeat processor . . . Each of these jobs exists in the national and regional economies in significant numbers. . . .

. . .

Based on the testimony of the vocational expert, I conclude that, considering the claimant’s age, education, work experience, and residual functional capacity, the claimant is capable of making a successful adjustment to other work that exists in significant numbers in the national economy. A finding of “not disabled” is therefore appropriate under the framework of the above-cited rules.

AR 40. Plaintiff argues the ALJ erred in characterizing her RFC as light in determining whether to apply the Grids here at step five. The Court agrees.

As noted above, if a claimant is found to be incapable of returning to his or her past relevant work at step four of the sequential disability evaluation process, at step five thereof the ALJ must show there are a significant number of jobs in the national economy that the claimant can do. *See Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999); 20 C.F.R. § 404.1520(d),

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(e), § 416.920(d), (e). The ALJ may do this through the testimony of a vocational expert or by reference to the Grids. *Osenbrock v. Apfel*, 240 F.3d 1157, 1162 (9th Cir. 2000); *Tackett*, 180 F.3d at 1100-1101. The Grids reflect the claimant's maximum sustained *exertional* work capacity. See SSR 83-10, 1983 WL 31251, at *2-*3 ("exertional capabilities" are used "to identify maximum sustained work capability"; "only impairment-caused limitations considered in each rule are exertional limitations").

If a claimant thus "has significant non-exertional impairments," then reliance on the Grids is not appropriate. *Ostenbrock*, 240 F.3d at 1162; see also *Tackett*, 180 F.3d at 1102 (non-exertional impairment, if sufficiently severe, may limit claimant's functional capacity in ways not contemplated by Grids). Accordingly, proper use of the Grids depends in each case on the nature and extent of the claimant's impairments and limitations:

The ALJ must apply the grids if a claimant suffers only from an exertional impairment. In such cases, the rule is simple: the grids provide the answer. Where the grids dictate a finding of disability, the claimant is eligible for benefits; where the grids indicate that the claimant is not disabled, benefits may not be awarded. However, where a claimant suffers solely from a nonexertional impairment, the grids do not resolve the disability question; other testimony is required. In cases where the claimant suffers from both exertional and nonexertional impairments, the situation is more complicated. First, the grids must be consulted to determine whether a finding of disability can be based on the exertional impairments alone. If so, then benefits must be awarded. However, if the exertional impairments alone are insufficient to direct a conclusion of disability, then further evidence and analysis are required. In such cases, the ALJ must use the grids as a "framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations." In short, the grids serve as a ceiling and the ALJ must examine independently the additional adverse consequences resulting from the nonexertional impairment.

Cooper v. Sullivan, 880 F.2d 1152, 1155-56 (9th Cir. 1989) (internal citations and footnotes omitted); see also *Reddick v. Chater*, 157 F.3d 715, 729 (9th Cir. 1998) (because claimant's limitations included non-exertional limitations, ALJ could not "rely exclusively on the grids,"

1 and thus vocational expert testimony was required); SSR 83-14, 1983 WL 31254, at *1, *3 (no
2 rule “applies to direct conclusion of ‘Disabled’ or ‘Not disabled’” under Grids where there exists
3 non-exertional limitation, rather that rule is used “as a framework for decisionmaking”; where
4 disability cannot be found “based on strength limitations alone, the rule which corresponds to the
5 person’s vocational profile and maximum sustained exertional work capability . . . will be the
6 starting point to evaluate what the person can do functionally”).
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8 For the Grids to apply, furthermore, the claimant’s “remaining exertional capabilities
9 must be sufficient to allow performance of substantially all (nearly all) of the primary strength
10 activities defining the particular level of exertion (i.e., sedentary, light, or medium).” SSR 83-10,
11 1983 WL 31251, at *2; *see also* SSR 83-12, 1983 WL 31253, at *1 (Grids direct conclusion of
12 “disabled” or “not disabled” where individual’s exertional RFC coincides or does not coincide
13 respectively with “exertional criteria” of specific rule). In some cases, there may be an additional
14 exertional or non-exertional limitation that has “very little effect on the range of work remaining
15 that an individual can perform.” SSR 83-14, 1983 WL 31254, at *3. That is, the restriction may
16 be “so slight that it would clearly have little effect on the occupational base,” that the individual
17 “comes very close to meeting a table rule which directs a conclusion of ‘Not disabled.’” *Id.*; SSR
18 83-12, 1983 WL 31253, at *2.
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20 On the other hand, the additional limitation “may substantially reduce a range of work to
21 the extent that an individual is very close to meeting a table rule which directs a conclusion of
22 ‘Disabled.’” SSR 83-14, 1983 WL 31254, at *3. “In still other instances, the restrictions of the
23 occupational base” imposed by the additional limitation “will be less obvious.” SSR 83-12, 1983
24 WL 31253, at *2. “Where the extent of erosion of the occupational base is not clear,” the ALJ
25 “will need to consult a vocational resource,” and even in “what appear to be ‘obvious’ types of
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1 cases,” such a resource “may be helpful.” *Id.*; SSR 83-14, 1983 WL 31254, at *4. Further, “[i]f
 2 the exertional level falls between two rules which direct opposite conclusions, i.e., ‘Not disabled’
 3 at the higher exertional level and ‘Disabled’ at the lower exertional level,” the ALJ is directed to
 4 consider the following:

- 5 a. An exertional capacity that is only slightly reduced in terms of the
 regulatory criteria could indicate a sufficient remaining occupational base to
 satisfy the minimal requirements for a finding of “Not disabled.”
- 6 b. On the other hand, if the exertional capacity is significantly reduced in
 terms of the regulatory definition, it could indicate little more than the
 occupational base for the lower rule and could justify a finding of “Disabled.”
- 7 c. In situations where the rules would direct different conclusions, and the
 individual's exertional limitations are somewhere “in the middle” in terms of
 the regulatory criteria for exertional ranges of work, more difficult judgments
 are involved as to the sufficiency of the remaining occupational base to
 support a conclusion as to disability. . . .

13 SSR 83-12, 1983 WL 31253, at *2-*3 (noting further that vocational specialist assistance “is
 14 advisable for [the last] types of cases”).

15 Plaintiff argues that since the major difference between a light exertional work capacity
 16 and a sedentary exertional work capacity is the amount of time an individual is able to stand or
 17 walk, rules in the Grids that are based on the lower, sedentary exertional work capacity should
 18 have been applied by the ALJ. The Court agrees. The Commissioner’s own rulings recognize
 19 “[t]he major difference between sedentary and light work is that most light jobs-- particularly
 20 those at the unskilled level of complexity--require a person to be standing or walking most of the
 21 workday.” SSR 83-14, 1983 WL 31254, at *4. In addition, “[s]ince being on one’s feet is
 22 required ‘occasionally’ at the sedentary level of exertion, periods of standing or walking should
 23 generally total no more than about 2 hours of an 8-hour workday, and sitting should generally
 24 total approximately 6 hours of an 8-hour workday.” SSR 83-10, 1983 WL 31251, *5; *see also* 20
 25 C.F.R. § 404.1567(a), § 416.967(a).

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1 A light exertional work capacity, on the other hand, requires as noted above that a person
2 “be standing or walking most of the workday.” SSR 83-14, 1983 WL 31254, at *4. Indeed, to be
3 able to perform the full range of light work, a person must stand or walk, “off and on, for a total
4 of approximately 6 hours of an 8-hour workday.” SSR 83-10, 1983 WL 31251, at *6. Again, the
5 Commissioner’s rulings recognize the importance of this difference between the two exertional
6 work capacities, expressly pointing out that “relatively few light jobs . . . are performed primarily
7 in a seated position.” SSR 83-12, 1983 WL 31253, at *4.

8 The Court thus finds the limitation to standing /walking for two hours and sitting for six
9 hours in an eight-hour workday, better coincides with the sedentary exertional work level. The
10 requirement that plaintiff be allowed to sit and stand at will would appear to even further erode
11 the available occupational base in this case. *See id.* (“Such an individual is not functionally
12 capable of doing either the prolonged sitting contemplated in the definition of sedentary work . . .
13 or the prolonged standing or walking contemplated for most light work.”). It is true that the ALJ
14 found that except for this and the other, non-exertional limitations noted above, plaintiff was
15 capable of performing light work as defined in 20 C.F.R. § 404.1567(b) and § 416.967(b), which
16 “involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects
17 weighing up to 10 pounds,” and which is thus greater than that contemplated by a limitation to
18 the sedentary work. *Id.*; *see also* 20 C.F.R. § 404.1567(a) (“Sedentary work involves lifting no
19 more than 10 pounds at a time and occasionally lifting or carrying articles like docket files,
20 ledgers, and small tools.”), § 416.967(a).

21 While the Commissioner’s rulings do recognize this is “[a]nother important difference”
22 between sedentary and light work, again as discussed above those rulings also deem the ability to
23 stand or walk for “most of the workday” to be “[t]he major difference” between the two. SSR 83-

1 14, 1983 WL 31254, at *4. Thus, although the heavier lifting and carrying capacity imposed by
 2 the ALJ indicates a greater functional capacity on plaintiff's part than a limitation to the lower,
 3 sedentary exertional level, that capacity clearly is sufficiently significantly reduced below that of
 4 the light exertional level to indicate the sedentary exertional level is the most appropriate one to
 5 use here. The Commissioner's own policy guidelines, as set forth in the Program Operations
 6 Manual System ("POMS"), would appear to support this view as well. The POMS "is a primary
 7 source of information used by Social Security employees to process claims for Social Security
 8 benefits" that "adjudicators at all levels of administrative review" must follow. SSR 13-2p, 2013
 9 WL 621536, at *15; <https://secure.ssa.gov/apps10/>.⁶

10 In light of the above, plaintiff argues the ALJ was required to follow the policy guidelines
 11 set forth in POMS DI 25025.015, which she asserts offers the following example of using a Grid
 12 rule as a framework when a claimant's exertional capacity falls between two rules:

13 **EXAMPLE:** A 50-year-old claimant with a high school education and
 14 unskilled past relevant work *has an RFC for standing/walking 2 hours of an*
8-hour day and sitting approximately 6 hours of an 8-hour day. He is able to
 15 lift/carry/push/pull 20 pounds occasionally and 10 pounds frequently. This
 16 RFC falls between rule 201.12, which has a decision of disabled, and 202.13,
 17 which has a decision of not disabled. *In this case, use rule 201.12 as a*
framework for a decision of disabled because the definitions in DI 25001.001
 18 (Medical-Vocational Quick Reference Guide) indicate light work usually
 19 requires walking or standing for approximately 6 hours of an 8-hour day.
Since the claimant can only walk or stand for 2 hours, he has a significantly
reduced capacity to perform light work and a sedentary medical-vocational
 20 *rule applies as a framework for a determination.*

21 Dkt. 15, p. 4 (emphasis added by plaintiff). Thus, according to this example, a claimant who is
 22 50 years old, has a high school education and unskilled past work, and who has the same sitting,
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 25 ⁶ "The public version of POMS" may be accessed through the Social Security Administration's website. *Id.* That
 26 version "is identical to the version used by Social Security employees except that it does not include internal data
 entry and sensitive content instructions." *Id.* In addition, although not having "the force of law," the Ninth Circuit
 has recognized the POMS as being "persuasive authority." *Warre v. Commissioner of Social Security Admin.*, 439
 F.3d 1001, 1005 (9th Cir. 2006).

1 standing, walking, lifting and carrying limitations as plaintiff, should be found disabled based on
 2 Grid Rule 201.12, using that rule as a framework for making a determination. Plaintiff asserts the
 3 ALJ therefore was required to find her disabled based on that Grid rule.

4 It seems though that the above example is no longer part of POMS DI 25025.015. *See*
 5 <https://secure.ssa.gov/apps10/poms.nsf/lnx/0425025015>. However, defendant does not argue that
 6 example was not part of the POMS at the time the ALJ issued his decision, and therefore that the
 7 ALJ was not therefore required to follow it. Indeed, the Social Security Administration's website
 8 indicates a revision to that particular policy guideline occurred on March 27, 2015, that may very
 9 well have resulted in the example's subsequent removal. *See id.* Even if the current version of
 10 POMS DI 25025.015 is used, though, the ALJ still would have been required to apply the lower,
 11 sedentary exertional rules rather than the higher, light exertional ones:

12 **D. Exertional capacity falls between rules with different conclusions**

13 Determining whether a claimant is disabled is a more difficult judgment when
 14 his or her exertional capacity falls in the middle of two rules and the rules
 15 direct opposite conclusions. In this situation apply the:

- 16 • higher-numbered rule and find the claimant not disabled if you
 conclude the claimant has a slightly reduced capacity for the higher
 level of exertion; or
- 17 • lower-numbered rule and find the claimant disabled if you conclude
 the claimant has a significantly reduced capacity for the higher level of
 exertion.

18 *Id.* As discussed above, even though the ALJ's RFC assessment suggests an exertional level that
 19 is higher than merely sedentary – given the greater lifting and carrying limitations – the capacity
 20 to perform at the light exertional level is clearly significantly reduced, indeed to the extent that it
 21 coincides much more closely with the sedentary level.

22 Defendant argues that the Grids may be used only if they “*completely and accurately*
 23 represent a claimant’s limitations,” and that “when a claimant’s exertional limitations fall

1 between two Grid rules, the ALJ fulfills his obligation to determine the claimant's occupational
2 base by consulting a vocational expert regarding whether a person with claimant's profile could
3 perform substantial gainful work in the economy." *Tackett*, 180 F.3d at 1101 (emphasis in
4 original); *Thomas v. Barnhart*, 278 F.3d 947, 960 (9th Cir. 2002). But as discussed above, the
5 Commissioner's own rulings and policy guidelines recognize that where a claimant's exertional
6 capacity is either significantly or only slightly reduced such that it essentially coincides with the
7 lower or higher rule respectively, that rule should be applied and a determination made on that
8 basis. Such is the case here. That is, given, also as discussed above, the significant reduction in
9 the ability to stand/walk the ALJ found plaintiff had – and the fact that the ability to stand/walk
10 is the major difference between sedentary and light work – the ALJ should have consulted the
11 lower, sedentary rules first before relying on the vocational expert's testimony. *See Lounsherry*
12 *v. Barnhart*, 468 F.3d 1111, 1116 (9th Cir. 2006); *Cooper*, 880 F.2d at 1155.

14 The Court disagrees with plaintiff, however, that given her age as of the time she turned
15 50 years old, education, and previous work experience, along with a maximum sustained work
16 capability of sedentary, she should have been found disabled pursuant to Grid Rule 201.12. *See*
17 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 201.12. This is because that Grid rule contemplates an
18 individual with either no prior work experience or an unskilled work background. *See id.* The
19 record, though, indicates plaintiff has a semiskilled work background. *See AR* 39, 98; *SSR* 00-
20 4p, 2000 WL 1898704, at *3. That suggests that instead of Grid Rules 201.12 or 201.13, Grid
21 Rules 201.14, 201.15 or 201.16 are the more appropriate ones to consider. *See* 20 C.F.R. Pt. 404,
22 Subpt. P, App. 2, § 201.14, § 201.15, § 201.16. But given that the ALJ made no finding as to the
23 transferability of job skills – other than that the issue of transferability was not material in light
24 of the fact that the two Grid rules he considered both directed a finding of "not disabled" (*see AR*
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1 39) – it is unclear whether a determination of “disabled” under Rule 201.14 or of “not disabled”
2 under Rule 201.15 or Rule 201.16 is more appropriate (*see* 20 C.F.R. Pt. 404, Subpt. P, App. 2, §
3 201.14, § 201.15, § 201.16). That issue remains to be resolved on remand.

4 The Court may remand this case “either for additional evidence and findings or to award
5 benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when the Court
6 reverses an ALJ’s decision, “the proper course, except in rare circumstances, is to remand to the
7 agency for additional investigation or explanation.” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th
8 Cir. 2004) (citations omitted). Thus, it is “the unusual case in which it is clear from the record
9 that the claimant is unable to perform gainful employment in the national economy,” that
10 “remand for an immediate award of benefits is appropriate.” *Id.*

12 Benefits may be awarded where “the record has been fully developed” and “further
13 administrative proceedings would serve no useful purpose.” *Smolen*, 80 F.3d at 1292; *Holohan v.*
14 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits should be awarded where:

16 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
17 claimant’s] evidence, (2) there are no outstanding issues that must be resolved
18 before a determination of disability can be made, and (3) it is clear from the
record that the ALJ would be required to find the claimant disabled were such
evidence credited.

19 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).
20 Because the issue of whether plaintiff is disabled under the Grids remains, remand for further
21 consideration thereof is warranted.

23 CONCLUSION

24 Based on the foregoing discussion, the Court hereby finds the ALJ improperly concluded
25 plaintiff was not disabled. Accordingly, defendant’s decision to deny benefits is REVERSED
26 and this matter is REMANDED for further administrative proceedings in accordance with the

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1 findings contained herein.

2 DATED this 2nd day of July, 2015.

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11 Karen L. Strombom
12 United States Magistrate Judge
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